



New South Wales

Racing Legislation Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Racing Administration Act 1998* to make further provision with respect to the publication of certain information (whether in New South Wales or elsewhere) about intended races of horses or greyhounds to be held at race meetings on licensed racecourses in New South Wales, and
- (b) to amend the *Greyhound and Harness Racing Administration Act 2004* and the *Thoroughbred Racing Act 1996* to omit certain provisions of those Acts that have been held to be invalid by the Full Court of the Federal Court.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (other than Schedule 1.1 and 1.3) on a day or days to be appointed by proclamation. Schedule 1.1 and 1.3 commence on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Acts

Publication of NSW race fields

Schedule 1.2 [1] and [3] insert Division headings in Part 4 of the *Racing Administration Act 1998* to facilitate the insertion of a discrete Division in that Part containing provisions relating to the publication of NSW race fields.

Schedule 1.2 [2] amends section 27 of the *Racing Administration Act 1998* to insert definitions of certain expressions used in the new provisions relating to the publication of NSW race fields. In particular, ***NSW race field*** is defined to mean information that identifies, or is capable of identifying, the names or numbers of the horses or dogs:

- (a) that have been nominated for, or that will otherwise take part in, an intended race to be held at any race meeting on a licensed racecourse in New South Wales, or
- (b) that have been scratched or withdrawn from an intended race to be held at any race meeting on a licensed racecourse in New South Wales.

The term ***relevant racing control body*** is defined to mean:

- (a) in relation to horse racing other than harness racing—Racing New South Wales, and
- (b) in relation to harness racing—Harness Racing New South Wales, and
- (c) in relation to greyhound racing—Greyhound Racing New South Wales.

Schedule 1.2 [4] inserts a new Division 3 in Part 4 of the *Racing Administration Act 1998* dealing with the publication of NSW race fields. The new Division replaces section 33 of that Act, which currently deals with the publication of such information. The new Division contains the following provisions:

Proposed section 33 makes it an offence for a person to publish a NSW race field (whether in New South Wales or elsewhere) unless the person:

- (a) is authorised to do so by a race field publication approval and complies with the conditions (if any) to which the approval is subject, or
- (b) is authorised to do so by or under the regulations.

The maximum penalty for an offence against the proposed section by a corporation will be 500 penalty units (currently, \$55,000). The maximum penalty for offences committed by other persons will be:

- (a) for a first offence—50 penalty units (currently, \$5,500) or imprisonment for 12 months (or both), and
- (b) for a second or subsequent offence—100 penalty units (currently, \$11,000) or imprisonment for 2 years (or both).

Proposed section 33A enables the relevant racing control body in relation to an intended race (or class of races) to be held at any race meeting on a licensed racecourse in New South Wales to grant approval to a person to publish a NSW race field (a *race field publication approval*) in respect of that race or class of races if the person has duly made an application for that approval under the new Division. Any such approval may (but need not) specify conditions to which the approval will be subject. The kinds of conditions that may be imposed are limited to:

- (a) a condition that the holder of the approval pay a fee or a series of fees of an amount or amounts and in the manner specified in the approval (being a fee or fees imposed in accordance with any requirements prescribed by the regulations), and
- (b) such other conditions as may be specified in the approval (being conditions of a kind that are prescribed as permissible conditions by the regulations).

Proposed section 33B makes provision for the making and determination of applications for race field publication approvals.

Proposed section 33C authorises certain conduct in connection with the collection of fees for the publication of NSW race fields that might otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

Proposed section 33D enables a person to appeal to the Minister against any of the following kinds of decisions of a relevant racing control body:

- (a) a decision of the body to reject an application by the person for a race field publication approval,
- (b) a decision of the body to impose a condition under proposed section 33A (2) (other than a condition relating to the payment of a fee or series of fees) on a race field publication approval,
- (c) a decision of the body to cancel a race field publication approval held by the person,
- (d) a decision of the body to vary any term of a race field publication approval held by the person (other than a term relating to the payment of a fee or series of fees).

Proposed section 33E enables an appellant or respondent in an appeal to the Minister under proposed section 33D to apply to the Administrative Decisions Tribunal for a review of the decision of the Minister in the appeal.

Proposed section 33F makes it clear that the extent of the approval conferred by a race field publication approval is limited to the publication of NSW race fields. The approval does not authorise the holder to do (or omit to do) anything else in relation to races to be held at any race meeting on a licensed racecourse in New South Wales.

Schedule 1.2 [5] inserts a new section 36C in the *Racing Administration Act 1998* to make provision for the manner of giving or serving notices or other documents under that Act.

Schedule 1.2 [6] amends clause 1 of Schedule 1 to the *Racing Administration Act 1998* to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1.2 [7] inserts a new Part in Schedule 1 to the *Racing Administration Act 1998* containing savings and transitional provisions consequent on the enactment of the proposed Act. In particular, the new Part provides that offences committed under the repealed section 33 may be taken into account in determining whether a person has committed a second or subsequent offence for the purposes of the new section 33.

Omission of invalid provisions

In *Sportodds Systems Pty Limited v State of New South Wales* [2003] FCAFC 237 (29 October 2003), the Full Court of the Federal Court held that certain provisions in section 14A of the *Thoroughbred Racing Act 1996* relating to the licensing of bookmakers were invalid because they infringed section 92 of the Commonwealth Constitution.

Similar provisions in the *Greyhound Racing Act 2002* and *Harness Racing Act 2002* were also held to be invalid. These provisions are now located in the *Greyhound and Harness Racing Administration Act 2004*.

Schedule 1.3 amends section 14A of the *Thoroughbred Racing Act 1996* to omit the provisions that were held to be invalid by the Full Court of the Federal Court.

Schedule 1.1 makes similar amendments to section 13 of the *Greyhound and Harness Racing Administration Act 2004*.

First print



New South Wales

Racing Legislation Amendment Bill 2006

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New South Wales

Racing Legislation Amendment Bill 2006

No. , 2006

A Bill for

An Act to amend the *Racing Administration Act 1998* with respect to the publication of race fields; to remove certain inoperative provisions of the *Greyhound and Harness Racing Administration Act 2004* and the *Thoroughbred Racing Act 1996*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Racing Legislation Amendment Act 2006</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.	5 6
(2) Schedule 1.1 and 1.3 commence on the date of assent to this Act.	7
3 Amendment of Acts	8
The Acts specified in Schedule 1 are amended as set out in that Schedule.	9 10
4 Repeal of Act	11
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

Schedule 1	Amendment of Acts	1
	(Section 3)	2
1.1	Greyhound and Harness Racing Administration Act 2004 No 36	3 4
[1]	Section 13 Registration of bookmakers	5
	Omit “taken to be registered in New South Wales for the purposes of” from section 13 (3).	6 7
	Insert instead “registered under”.	8
[2]	Section 13 (4) (b) (iii)–(vi)	9
	Omit the subparagraphs.	10
[3]	Section 13 (8)	11
	Omit the subsection.	12
1.2	Racing Administration Act 1998 No 114	13
[1]	Part 4, Division 1, heading	14
	Insert before section 27:	15
	Division 1 Interpretation	16
[2]	Section 27 Definitions	17
	Insert in alphabetical order:	18
	<i>NSW race field</i> means information that identifies, or is capable of identifying, the names or numbers of the horses or dogs:	19 20
	(a) that have been nominated for, or that will otherwise take part in, an intended race to be held at any race meeting on a licensed racecourse in New South Wales, or	21 22 23
	(b) that have been scratched or withdrawn from an intended race to be held at any race meeting on a licensed racecourse in New South Wales.	24 25 26
	<i>race field publication approval</i> means an approval granted under section 33A.	27 28

	<i>relevant racing control body</i> means:	1
	(a) in relation to horse racing other than harness racing— Racing New South Wales, and	2 3
	(b) in relation to harness racing—Harness Racing New South Wales, and	4 5
	(c) in relation to greyhound racing—Greyhound Racing New South Wales.	6 7
	<i>working day</i> means any day that is not a Saturday, Sunday or public holiday.	8 9
[3]	Part 4, Division 2, heading	10
	Insert before section 29:	11
	Division 2 General offences	12
[4]	Part 4, Division 3	13
	Omit section 33. Insert instead:	14
	Division 3 Publication of NSW race fields	15
	33 Publication of NSW race fields restricted	16
	A person must not, whether in New South Wales or elsewhere, publish a NSW race field unless the person:	17 18
	(a) is authorised to do so by a race field publication approval and complies with the conditions (if any) to which the approval is subject, or	19 20 21
	(b) is authorised to do so by or under the regulations.	22
	Maximum penalty:	23
	(a) in the case of a corporation—500 penalty units, and	24
	(b) in any other case:	25
	(i) for a first offence—50 penalty units or imprisonment for 12 months (or both), and	26 27
	(ii) for a second or subsequent offence—100 penalty units or imprisonment for 2 years (or both).	28 29

33A	Relevant racing control body may grant race field publication approvals	1
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(1)	The relevant racing control body in relation to an intended race (or class of races) to be held at any race meeting on a licensed racecourse in New South Wales may grant approval to a person to publish a NSW race field (a <i>race field publication approval</i>) in respect of that race or class of races if the person has made an application for that approval under this Division.	3
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(2)	A relevant racing control body may (but need not) impose any of the following kinds of conditions on a race field publication approval that it grants:	9
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(a)	a condition that the holder of the approval pay a fee or a series of fees of an amount or amounts and in the manner specified in the approval (being a fee or fees imposed in accordance with any requirements prescribed by the regulations),	12
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(b)	such other conditions as may be specified in the approval (being conditions of a kind that are prescribed as permissible conditions by the regulations).	17
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(3)	Any fee that is payable under a race field publication approval is a debt due to the relevant racing control body that granted the approval and is recoverable as such in a court of competent jurisdiction.	20
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(4)	A relevant racing control body that grants a race field publication approval may, by written notice to the holder of the approval, cancel or vary the terms of the approval on any grounds prescribed by the regulations.	24
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(5)	If a relevant racing control body cancels or varies a race field publication approval, the body must provide the holder of the approval with written reasons indicating why the approval was cancelled or varied (as the case may be).	28
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33B	Applications for race field publication approvals	32
(1)	A person who wishes to publish a NSW race field may apply to the relevant racing control body in relation to the intended race (or class of races) to which the field relates for a race field publication approval in respect of the race or class of races.	33
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(2)	An application for a race field publication approval (an <i>approval application</i>) must be:	1
	(a) made in the manner and in the time as may be prescribed by the regulations, and	2
	(b) accompanied by such information as may be prescribed by the regulations.	3
(3)	In determining an approval application, the relevant racing control body to which the application is made must:	4
	(a) consult with each racing club that intends to conduct the race or class of races in respect of which the approval is sought, and	5
	(b) take into account such criteria in relation to the determination of the application (if any) as may be prescribed by the regulations.	6
(4)	Without limiting subsection (3) (b), any criteria that are prescribed by the regulations for the purposes of that paragraph may specify:	7
	(a) the kinds of matters that may or must be taken into account in determining an approval application, and	8
	(b) the kinds of matters that must not be taken into account in determining an approval application.	9
(5)	If a relevant racing control body to which an approval application is made determines that a race field publication approval should not be granted to the applicant (or should be granted subject to any condition imposed under section 33A (2)), the body must provide the applicant with written reasons indicating why the application was rejected or the conditions were imposed (as the case may be).	10
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33C	Authorisations for section 51 of the Trade Practices Act 1974 of the Commonwealth	29
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(1)	The following are specifically authorised by this Act for the purposes of the <i>Trade Practices Act 1974</i> of the Commonwealth and the <i>Competition Code of New South Wales</i> :	31
	(a) any agreement entered into between:	32
	(i) 2 or more relevant racing control bodies in relation to the appointment of an agent to collect, or the collection by such an agent or any of the relevant racing control bodies of, fees that are payable to those bodies under race field publication approvals granted by them, or	33
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(ii)	one or more relevant racing control bodies and any corresponding body of another State or Territory in relation to the appointment of an agent to collect, or the collection by such an agent or any of the relevant racing control bodies of, fees that are payable to those bodies in relation to publication of race fields,	1 2 3 4 5 6
(b)	the conduct of those bodies and any agent in negotiating and entering into any such agreement,	7 8
(c)	the conduct of those bodies and any agent in performing any such agreement.	9 10
(2)	Anything authorised to be done by this section is authorised only to the extent to which it would otherwise contravene Part IV of the <i>Trade Practices Act 1974</i> of the Commonwealth or the <i>Competition Code of New South Wales</i> .	11 12 13 14
(3)	In this section: <i>agreement</i> includes a contract, arrangement or understanding.	15 16
33D	Appeals to Minister	17
(1)	A person may appeal to the Minister against any of the following decisions of a relevant racing control body:	18 19
(a)	a decision of the body to reject an application by the person for a race field publication approval,	20 21
(b)	a decision of the body to impose a condition under section 33A (2) (other than a condition relating to the payment of a fee or series of fees) on a race field publication approval,	22 23 24
(c)	a decision of the body to cancel a race field publication approval held by the person,	25 26
(d)	a decision of the body to vary any term of a race field publication approval held by the person (other than a term relating to the payment of a fee or series of fees).	27 28 29
(2)	An appellant must give notice to the following person and body of the grounds of the appellant's appeal in the form and manner approved by the Minister from time to time:	30 31 32
(a)	the Minister,	33
(b)	the relevant racing control body that made the decision appealed against.	34 35

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- (3) The relevant racing control body that made the decision appealed against is to be the respondent in the appeal.

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 - (4) A notice under subsection (2) must be given within 20 working days (or within such longer period as the Minister may allow) after the date on which the appellant was notified of the decision of the relevant racing control body that is being appealed.

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 - (5) In determining an appeal, the Minister may appoint a person that the Minister considers has suitable qualifications to act as an arbitrator (the *arbitrator*) to furnish a report to the Minister with respect to the appeal containing:

 - (a) a recommendation as to whether the appeal should, in the opinion of the arbitrator, be dismissed or allowed either unconditionally or subject to such conditions as may be specified in the report, and
 - (b) the reasons for the recommendation.

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 - (6) The unsuccessful party to an appeal is to pay the costs of any arbitrator appointed by the Minister under subsection (5).

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 - (7) The Minister, after considering any report that is furnished to the Minister under subsection (5), may:

 - (a) dismiss the appeal, or
 - (b) allow the appeal either unconditionally or subject to such conditions as the Minister thinks proper to impose, or
 - (c) if the appeal is against the imposition of conditions, refuse to approve the application for a race field publication approval from the determination of which the appeal has been made, or
 - (d) return the report to the arbitrator concerned and request further consideration of the report.

Note. As the decision of the Minister in an appeal under this section is a decision that is reviewable by the Administrative Decisions Tribunal under section 33E, section 48 of the *Administrative Decisions Tribunal Act 1997* requires the Minister to give the appellant and respondent in the appeal written notice of the decision on the appeal. Division 2 of Part 2 of Chapter 5 of that Act enables the appellant and respondent to request written reasons for the Minister's decision.

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 - (8) The decision of the Minister under subsection (7) (other than a decision under subsection (7) (d)) has effect as if it were a decision of the relevant racing control body from whose decision the appeal is made.

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33E	Review by Administrative Decisions Tribunal of Minister's decision on appeal	1 2
(1)	The appellant or respondent in an appeal under section 33D may apply to the Administrative Decisions Tribunal for a review of the decision of the Minister in the appeal.	3 4 5
(2)	Section 53 (Internal reviews) of the <i>Administrative Decisions Tribunal Act 1997</i> does not apply to a decision of the Minister in an appeal under section 33D.	6 7 8
33F	Effect of race field publication approval limited	9
	For the avoidance of doubt, the granting of a race field publication approval does not operate to authorise the holder of the approval to do (or omit to do) anything in relation to a race to be held at any race meeting on a licensed racecourse in New South Wales other than to publish the NSW race field to which the approval relates in accordance with the terms of the approval.	10 11 12 13 14 15
[5]	Section 36C	16
	Insert after section 36B:	17
36C	Giving of notices and other documents	18
(1)	For the purposes of this Act, a notice or other document may be given to a person (or a notice or other document may be served on a person):	19 20 21
(a)	in the case of a natural person:	22
(i)	by delivering it to the person personally, or	23
(ii)	by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or	24 25 26 27 28
(iii)	by sending it by facsimile transmission to the facsimile number of the person, or	29 30
(b)	in the case of a body corporate:	31
(i)	by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or	32 33 34 35 36 37
(ii)	by sending it by facsimile transmission to the facsimile number of the body corporate.	38 39

(2)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	1 2 3
[6]	Schedule 1 Savings and transitional provisions	4
	Insert at the end of clause 1 (1):	5
	the <i>Racing Legislation Amendment Act 2006</i>	6
[7]	Schedule 1, Part 5	7
	Insert after Part 4:	8
	Part 5 Provisions consequent on enactment of Racing Legislation Amendment Act 2006	9 10
9	Definition	11
	In this Part:	12
	<i>amending Act</i> means the <i>Racing Legislation Amendment Act 2006</i> .	13 14
10	Previous offences under section 33 may be taken into account in determining penalties	15 16
(1)	Section 33 (as substituted by the amending Act) applies to acts or omissions that occur on or after the day on which the provision of the amending Act that substitutes the section commences.	17 18 19
(2)	However, an offence against section 33 (as in force at any time before its substitution by the amending Act) may be taken into account in deciding whether an offence against section 33 (as substituted by the amending Act) is a second or subsequent offence against the substituted section for the purposes of determining the penalty for the offence.	20 21 22 23 24 25
1.3	Thoroughbred Racing Act 1996 No 37	26
[1]	Section 14A Licensing of bookmakers	27
	Omit “taken to be registered in New South Wales for the purposes of” from section 14A (3).	28 29
	Insert instead “registered under”.	30
[2]	Section 14A (4) (d)	31
	Omit the paragraph.	32

[3] Section 14A (5)	1
Omit “, (d)”.	2
[4] Section 14A (6)	3
Omit the subsection.	4